



State of Connecticut  
**DIVISION OF PUBLIC DEFENDER SERVICES**

OFFICE OF CHIEF PUBLIC DEFENDER  
30 TRINITY STREET - 4<sup>th</sup> Floor  
DEFENDER  
HARTFORD, CONNECTICUT 06106  
(860) 509-6405 Telephone  
(860) 509-6495 Fax

RENEE L. CIMINO  
ASSISTANT PUBLIC

[renee.cimino@jud.ct.gov](mailto:renee.cimino@jud.ct.gov)

**Testimony of Renee Cimino  
Assistant Public Defender  
Office of Chief Public Defender**

*Committee Bill No 6706  
An Act Concerning Rescission of Probation*

**Judiciary Committee Public Hearing  
March 24, 2009**

The Office of Chief Public Defender opposes *Committee Bill No. 6706, An Act Concerning Rescission of Probation*, which if enacted, would allow for a rescission of probation prior to the commencement of a period of probation for conduct while incarcerated.

This Office has concerns regarding the constitutionality of the proposed legislation. The proposed legislation does not provide the requisite procedural and substantive safeguards required by due process which are provided for under the United States and Connecticut Constitutions. Such requirements include, but are not limited to, the independent judicial review of any and all arrest warrants, an arraignment to provide for an advisement of rights, the appointment of counsel for indigent defendants, and/or the setting of reasonable bond. The proposed legislation unilaterally allows the prosecuting authority by written motion to reopen a final judgment, summon a defendant into court without an opportunity for a bond hearing and request an increase in a sentence based upon a defendant's conduct while incarcerated.

It is the opinion of this office that while the proposed legislation is civil in nature, it is punitive in action. Further, it also contains ex post facto

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consequences since it allows a prosecuting attorney plenary power to reopen a final judgment and retroactively use new conduct to increase the punishment of the crime for which a person has already been sentenced. The proposed legislation will hence construct a legislative framework in which a defendant's plea can not be knowingly and voluntarily made due to the fluid and unknown period of incarceration. This proposed legislation will also have a significant impact on plea negotiations as this office's clients could likely be advised not to accept any period of probation for fear of exposing them to the risk of additional incarceration. As a result, more people could be sentenced to prison or choose to take their case to a jury trial thus further overburdening the staff and resources of this office and the courts.

Under our current law, probation is not considered to be punitive in nature, but instead has been designed to reform behavior to prevent recidivism. Courts are aware that this reformation will not take place during the punitive (incarceration) phase of the sentence and rely upon the Office of Probation to provide professional services to aid individuals in the rehabilitative process. Many of this office's clients have multidimensional issues which when addressed could allow them to live productive lives in our community. The Office of Probation provides a valuable support system that allows probationers to receive mental health treatment, educational services, job training, anger management and parenting classes while living in their own environment. Rescinding probation before the services commence is counterproductive to the entire criminal justice system and violates the rehabilitative purpose of probation.

This office further believes that the proposed legislation is unnecessary. Please note that under our current system, the Department of Corrections has the authority to administratively discipline any inmate that has violated any prison regulation or criminal law. Examples of such discipline include, but are not limited to, segregation, the loss of prison privileges and, if the action rises to the level of criminal conduct, an arrest warrant will be applied for following Constitutionally mandated due process requirements. If the prisoner is brought to court on a warrant alleging new criminal conduct while incarcerated, prior to the commencement of probation, the court possesses the authority to make any sentence consecutive to the person's present sentence, thus adding an additional period of incarceration to their existing sentence.

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Also of concern to this Office is that the proposed legislation could result in a substantial increase of costs to all agencies in the criminal justice system due to an increased number of court hearings and proceedings. In addition, there will be an increase in the prison population as people will be prevented from discharging from their sentences and/or posting a bond or receiving jail credit for the time they are serving while awaiting disposition of the motion filed by the prosecutor. Most importantly, there is an overall cost to society as this legislation will prevent probation's goal of reducing recidivism.